

Slovenia, Constitutional Court, U-I-78/16-21, Up-384/16-20, constitutional, 5 June 2019, ECLI:SI:USRS:2019:U.I.78.16

Member State

 Slovenia

Topic

Independence (salaries and promotion of magistrates), rule of law (Non discrimination and equality before the law)

Deciding Court Original Language

Ustavno sodišče Republike Slovenije

Deciding Court English translation

Constitutional Court of the Republic of Slovenia

Registration N

U-I-78/16-21, Up-384/16-20

Date Decision

5 June 2019

ECLI (if available)

ECLI:SI:USRS:2019:U.I.78.16

EU legal sources and CJEU jurisprudence

Article 21 CFREU

Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

Subject Matter

The Constitutional Court (the CC) interpreted the principle of equality before law, the role of

stability of judiciary and comparability of judicial service to other legal professions in case concerning judicial salaries, where the high court judge, who left the judiciary and worked as a practising lawyer for a few years, alleged unequal treatment with respect to her judicial colleagues.

Legal issue(s)

The case is related to independence (salaries and promotion of magistrates). The CC had to determine, whether classifying a high court judge, who decided to become a practising lawyer for a few years and then returned to the same post, to a lower salary class than before, amounted to unjustified unequal treatment with respect to her judicial colleagues that remained in the judiciary throughout their careers, and whether this breached the principle of trust in the law (Article 2 of the Constitution).

National Law Sources

Article 9 of the Public Sector Salary System Act

Articles 2, 14 (1), 14 (2) of the Constitution

Article 45 of the Judicial Service Act

Facts of the case

A high court judge left the bench to become a practising lawyer for a few years and subsequently succeeded in applying to the same judicial post. According to Articles 44 and 45 of the Judicial Service Act (the JSA) and Article 9 of the Public Sector Salary System Act (PSSSA), she was treated as a newly elected high court judge and was classified in 55th salary bracket even though she was previously (before temporarily leaving the judiciary) promoted to 58th salary bracket. She claimed unequal treatment with respect to the colleagues who remained in the judiciary. Further, she highlighted her successful judicial career and her achievements. Not only that she served as high court judge for many years, but she also cooperated with the Center for Education of Judiciary in preparation and performance of judicial trainings, she was one of the examiners for the lawyer's state exam for more than 20 years, she was awarded a medal for her outstanding work etc. In addition, she alleged to have been a victim of discrimination on the basis of age in the sense of Article 21 of the CFREU and Council Directive 2000/78/EC.

Reasoning (role of the Charter or other EU, ECHR related legal basis)

The CC disagreed with the applicant. It opined that the relevant provisions are clear and that the interpretation adopted by the lower courts is confirmed by the grammatical and systemic interpretation. The CC further held that permanency of the judges is important for effective and stable judiciary. Persons, whose judicial service is uninterrupted, are bound by limitations, that enable the protection of independence, impartiality, fairness and reputation of the judicial service throughout their career and hence contribute to these values to a greater extent than the judges who temporarily leave the judiciary. Consequently, the different treatment was justified.

The CC then continued to review the case from the perspective of the principle of principle of trust in the law from Article 2 of the Constitution, which guarantees that the state will not deteriorate the individual's legal position arbitrarily, i. e. without a real reason, justified in the prevailing and legitimate public interest. It opined that the legislation never recognized her any special rights on the basis of promotions during her first judicial mandate. As a result, since the applicant was not accorded any rights, her legal position could not be (arbitrarily) deteriorated and Article 2 was not violated. The CC concluded that the legislator enjoys a margin of appreciation with respect to the question at hand, since neither the legislation, nor the constitution demand the treatment proposed by the applicant.

With respect to the alleged age discrimination (Article 21 of the CFREU, Council Directive 2000/78/ECC), the CC dismissed the claim, since the applicant failed to materially exhaust legal remedies.

Relation of the case to the EU Charter

The CC recognized that the prohibition of discrimination on the basis of age is guaranteed by Article 14 of the Constitution to the same extent as under Article 21 CFREU. This statement could arguably be understood as a response to the applicant's argument related to age discrimination, which revolved only around CFREU, despite the fact that the same principle is protected by the Constitution. This obiter dictum however should not be given too much weight, since the CC immediately continued by stating that the applicant failed to materially exhaust domestic legal remedies with respect to this allegation.

Use of Judicial Interaction technique(s)

Comparative reasoning with the CFREU: the CC recognized that the constitution affords the same level of protection against discrimination on the basis of age than the CFREU.

Vertical Judicial Interaction patterns (Internal – with other superior national courts, and external – with European supranational courts)

See Relation of the case to the EU Charter and Use of Judicial Interaction technique(s) above.

(Link to) full text

<http://odlocitve.us-rs.si/sl/odlocitev/US32018>

Author

Mohor Fajdiga, UL

History of the case: (please note the chronological order of the summarised/referred national

judgments.)

1. Administrative Court, Judgment I U 444/2013 of 4 June 2014
 2. Supreme Court, Judgment X Ips 365/2014 of 24 February 2016
 3. Constitutional Court, U-I-78/16-21, Up-384/16-20 of 5 June 2019
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